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Federal Communications Commission
Office of the Secretary

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act Of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

To: Office of the Secretary
Attn: Chief, Media Bureau

COMMENTS OF DAILY NEWS, L.P.

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Dated: October 23, 2006

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Summary

Over thirty years ago the Federal Communications Commission adopted its newspaper/broadcast cross-ownership rule restricting ownership by a single entity of one or more television stations, radio stations and newspapers in a single market with the objectives of insuring viewpoint diversity and preventing undue concentration of economic power in local media markets. The ban was upheld by the Supreme Court as serving the public interest in 1978 in *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

As part of its *2002 Biennial Regulatory Review* of its existing media ownership policies, the Commission, in June 2003, proposed, among other things, to eliminate its cross-ownership rules. It replaced its newspaper/broadcast cross-ownership ban with a set of Cross-Media Limits premised on the Commission's measurement of media diversity, which it referred to as the Diversity Index. The Commission *2002 Biennial Review Order* was challenged and, in *Prometheus Radio Project, et al. v. FCC,* 373 F.3d 372 (2004) (*remainder of cite omitted*), the Court affirmed the Commission decision to eliminate its existing newspaper/broadcast cross-ownership ban, but struck down the Cross-Media Limits set by the Commission. The Court concluded that the limits selected by the Commission were not supported by reasoned analysis and that acceptance of the Commission's use of its Diversity Index, upon which the Cross-Media Limits were based, would require one "to abandon both logic and reality." *Prometheus*, 373 F. 3d at 408.

In response to the Court rejection of large portions of its decision, the Commission has now invited comment on all the issues remanded by the Court, including those involving its cross-ownership rules. The Commission's job now is to decide what it will set in the way of

cross-ownership limits. In setting those new limits, the Commission should not make the same mistakes it did in its previous decision. While correctly recognizing that not all media are of equal importance to the public in providing local news and information, the Commission incorrectly concluded that all outlets within the same media type should be treated as having equal market shares in determining media diversity. As the Court pointed out, such a conclusion places logic and reality on their head. In defining the level of diversity in a local market the Commission must look at the actual commercial share a media entity controls in a specific local market, rather than merely focusing on the number of media entities that exist in that market. New limits should be adopted by the Commission banning an entity's ownership and operation of multiple daily newspapers and one or more television stations in a local market. Permitting such a concentration of control would unacceptably reduce the public's access to diverse sources of local news and information and stifle competition in advertising. Even in the nation's largest market, New York, New York, permitting additional media acquisitions resulting in such common ownership would permit a small group of entities to dominate the market, thereby posing a threat to democratic discourse and raising concerns about undue economic concentration. As such, the Commission should restrict newspaper/broadcast combinations involving daily newspapers and television stations in any local market.

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To: The Commission

COMMENTS OF DAILY NEWS, L.P.

Daily News, L.P. ("Daily News"), by its attorneys, hereby submits these comments in response to the *Further Notice of Proposed Rulemaking ("Further Notice")*, FCC 06-93, released July 24, 2006, in the above-captioned proceeding. Daily News, L.P. is the publisher of the New York Daily News. It has no interest in any television or radio station, nor does it have an interest in any other daily newspaper published in New York City. Daily News advocates that the Commission impose a ban on cross-media acquisitions involving more than one daily newspaper and one or more television stations in the same market.

I. Background

In its *Further Notice*, the Commission seeks comment on how it should address those issues raised by the U.S. Court of Appeals for the Third Circuit in *Prometheus v. FCC.*[1] In June, 2003, the Commission adopted a Report and Order in its third biennial review of its broadcast ownership rules (the "*2002 Biennial Review Order"*)[2]. Among those changes adopted in its *2002 Biennial Review Order,* the Commission sought to eliminate the existing cross-ownership rules restricting the ownership by a single entity of one or more radio stations, television station and a newspaper in a single market[3] and replace the rule with a single set of Cross-Media Limits. The Commission concluded that its newspaper/broadcast cross-ownership rule was no longer necessary to promote competition, diversity and localism.[4]

The Commission concluded that the existing newspaper/broadcast cross-ownership rule could not be justified, finding that the blanket ban on cross-ownership was not needed to promote viewpoint diversity, in large part, because the Commission's revised local cross-media ownership rules would protect diversity sufficiently.[5] Similarly, the Commission concluded that

[1] *Prometheus Radio Project, et al. v. FCC,* 373 F.3d 372 (2004*), stay modified on rehearing,* No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied,* 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177).
[2] *See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* 18 FCC Rcd 13620, 13711-47 (2003), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.,* 373 F.3d 372 (2004) ("*Prometheus*"), *stay modified on rehearing,* No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied,* 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177).
[3] 47 C.F.R. § 73.3555(d) (prohibiting common ownership of a daily newspaper and a broadcast station in the same market). Adopted in 1975, the newspaper/broadcast cross-ownership rule prohibits in absolute terms common ownership of a full-service station and a daily newspaper when the broadcast station's service contour encompasses the newspaper's city of publication. The rule was intended to promote media competition and diversity. *2002 Biennial Review Order*, 18 FCC Rcd. at 13747.
[4] *Id. at* 13747-48.
[5] *Id.* at 13760-62.

the existing radio/television cross-ownership rule could not be justified under the public interest.[6] To determine the availability of media outlets in markets of various sizes, the Commission developed a new formula it named the Diversity Index (from which the Cross-Media Limits were to be derived). The Diversity Index measured the availability of various media outlets and assigned a weight to each type of outlet based on its perceived relative use by consumers. The Commission used the Diversity Index to evaluate in the aggregate the contributions to diversity of various media outlets in order to determine which size markets were most at risk for viewpoint concentration.[7] In markets with nine or more television stations the Commission concluded that it would permit cross-media combinations without any limit, so that a single entity might own any amount of daily newspapers and up to the maximum number of television and radio stations permitted by the local television and radio ownership rules.[8]

The *Prometheus* Court affirmed the Commission decision to eliminate the existing newspaper/broadcast cross-ownership ban.[9] At the same time, the Court additionally affirmed the Commission decision to retain some restrictions on cross-ownership in order to ensure diversity, holding that the Commission's continued regulation of cross-ownership was constitutionally sound.[10]

The Court, however, concluded that the specific ownership limits chosen by the Commission were not supported by reasoned analysis. It found the Diversity Index formula to be seriously flawed. In attempting to implement its Diversity Index "the Commission's Cross-Media Limits employ several irrational assumptions and inconsistencies."[11] The Court found

[6] *Id.* at 13768.
[7] *Id.* at 13776.
[8] *Id.* at 13804.
[9] *Prometheus*, 373 F.3d at 398-400.
[10] *Id.* 373 F.3d at 400-02.
[11] *Id.* 373 F.3d at 408.

that the limits selected by the Commission were not supported by reasoned analysis and remanded the matter to the Commission for further justification or modification. Among other things, the Court was bothered by the Commission decision to assign all outlets within the same media type equal market shares in constructing its Diversity Index, concluding that assuming equal market shares made "unrealistic assumptions about a media outlet's relative contributions to viewpoint diversity in local markets."[12]

In response to the Court's rejection of the Commission decision, the Commission has invited comment on all the issues remanded by the *Prometheus* Court regarding cross-ownership. Tentatively concluding that the Diversity Index is an inaccurate tool for measuring diversity, the Commission has specifically sought comment as to how it should approach cross-ownership limits with respect to its newspaper/broadcast cross-ownership rule.[13]

II. The Commission Must Impose a Ban on Cross-Ownerships Involving More than One Daily Newspaper and One or More Television Stations in a Single Market

In 1975, the Commission adopted its newspaper/broadcast cross-ownership rule with the goal of insuring viewpoint diversity and competition in the local media market.[14] In 1978, the Supreme Court upheld the newspaper/broadcast cross-ownership rule against First Amendment challenge, concluding that "diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by preventing undue

[12] *Id.* An example of the unrealistic results derived from relying on the equal market shares methodology cited by the Court was the Dutchess Community College television station in New York City, which had a 1.5 percent weighted share while the New York Times Company's co-owned daily newspaper and radio station had a combined 1.4 percent weighted share. As the Court accurately described, "[a] Diversity Index that requires us to accept that a Community College television station makes a greater contribution to viewpoint diversity than a conglomorate that includes the third largest newspaper in America requires us to abandon both logic and reality." *Id.* The Court also found that the Commission had placed too much weight on the Internet in its Diversity Index and that it had inconsistently derived the Cross-Media Limits from its Diversity Index. *Further Notice*, paras. 29-31.

[13] *Further Notice*, para. 32.

[14] *Amendment of § 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, Report and Order*, 50 FCC 2d 1046, 1074 (1975), *recon.* 53 FCC 2d 589 (1975), *aff'd sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

concentration of economic power."[15] The Commission has noted that a diverse and robust marketplace of ideas is the "foundation of our democracy."[16] The Supreme Court has held that it is "a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[17] This policy is given specific effect through the Commission's regulation of broadcast ownership.

The Commission historically has sought to diffuse ownership of media outlets among multiple entities in order to diversify the viewpoints available to the public. Commission decisions limiting broadcast ownership have concluded that a larger total number of outlet owners increase the probability that their independent content selections will collectively promote a diverse array of media content.[18] As the Commission has explained, "the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial or similar programming sense, on public opinion at the regional level."[19] In its 2002 *Biennial Review Order,* the Commission reaffirmed its adherence to its longstanding determination that the policy of limiting common ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity.[20]

In addition to the goal of diversity, the goal of fostering competition has also guided the Commission in the administration of its ownership rules. The Commission affirmed its commitment to promoting media competition in its *2002 Biennial Review Order.*[21] The Commission observed that "consumers receive more choice, lower prices, and more innovative

[15] *National Citizens Committee for Broadcasting*, 436 U.S. 775, 780 (1978).
[16] *2002 Biennial Review Order,* 18 FCC Rcd. at 13627.
[17] *Associated Press v. United States*, 326 U.S.1, 20 (1945).
[18] *2002 Biennial Review Order,* 18 FCC Rcd. at 13627-28.
[19] *Amendment of § 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, 45 FCC 1476, 1477 (1964).
[20] *2002 Biennial Review Order*, 18 FCC Rcd. at 13629.
[21] *Id.* at 13638 ("We hereby affirm our longstanding commitment to promoting competition by ensuring pro-competitive market structures…[The] benefits of competition can be achieved when regulators accurately identify market structures that will permit vigorous competition.")

services in competitive markets than they do in markets where one or more firms exercises market power."[22] In limiting broadcast ownership to promote economic competition, the Commission has additionally taken strides toward promoting the separate policy goal of protecting competition in the marketplace of ideas.

Thus, the Commission's media ownership limits historically have been concerned with promoting diversity of viewpoint and preventing undue concentration of economic power and inordinate influence over public opinion. Moreover, the current public perception of the importance of these factors remains high. In fact, during the recent rulemaking comment period in this very proceeding, the Commission received more than 500,000 comments and letters from individual citizens expressing their concerns about the potential consequences of media consolidation, including concerns that such consolidation would result in a significant loss of viewpoint diversity and adversely affect competition.[23]

In its *2002 Biennial Review Order,* the Commission expressly determined that "a blanket prohibition on the common ownership of broadcast stations and daily newspapers in all communities and in all circumstances" could no longer be justified as necessary to achieve and protect diversity.[24] While stating its continued belief that diversity of ownership could advance its goal of diversity of viewpoint, the Commission concluded that its new rules containing Cross-Media Limits would sufficiently protect diversity of viewpoint while permitting other efficiencies. The *Prometheus Court* rejected the Commission's use of its Diversity Index for measuring diversity. Since the Commission's Cross-Media Limits were based on the rejected

[22] *Id.*
[23] *Id. at 13624*
[24] *Id.* at 13747-48.

Diversity Index, the specific limits selected by the Commission (such as its decision that, in markets with nine or more television stations, unlimited television/newspaper cross-media combinations would be permitted) were not supported by reasoned analysis and were remanded to the Commission for further review and modification. The Commission must now again attempt to determine which cross-ownership limits it should adopt.

The Commission's *Further Notice* asks whether such limits should vary depending upon the characteristics of local markets.[25] Looking at actual commercial shares held by media entities, the Commission must determine whether the same unhealthy level of concentration prevalent in small and medium size markets, which caused the Commission to adopt restrictions on cross-ownership in its *2002 Biennial Review Order*, would similarly exist in large markets. The answer is "yes." Therefore, in markets where an entity already owns one or more television stations and a daily newspaper, the Commission should inhibit that entity's ability to form even a bigger media combination by acquiring yet another daily newspaper, leading to inordinate diversity losses. Under the Cross-Media Limits initially adopted by the Commission, it would have been impossible (absent a waiver) for an entity owning a television station located in a market with less than nine television stations to own more than one daily newspaper.[26] On remand the Commission must extend this ban to markets with nine or more television stations as well. Permitting cross-media combinations involving one or more television stations and more than one daily newspaper in the same market would do substantial damage to the Commission's claimed goals of ensuring viewpoint diversity and economic competition in local media markets.

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[25] *Further Notice* at para. 32.

[26] Newspaper/broadcast combinations were prohibited in markets with three or fewer television stations and, in markets containing between four and eight television stations, the Commission allowed combinations including a newspaper and one television station.

As compared to 1975, when the Commission first adopted its newspaper/broadcast cross-ownership rule, consumers presently have the option of receiving news and information from a myriad of video, audio and print options; yet, the Commission's own findings document that the primary source of local news for the overwhelming majority of the public remains television and daily newspapers.[27] The Commission's conclusion that the public relies on television and newspapers for coverage of local news is hardly surprising. Since newspapers and television are, by far, the most important source of local news and information, it follows that eliminating a newspaper as a result of a cross-media merger would deprive all citizens of an important independent voice. The media concentration resulting from a merger of companies owning multiple newspapers and television stations can only result in a combination anathema to "the widest dissemination of information from diverse and antagonistic sources."[28] The enormous power that goes with ownership would allow conglomerate media owners to promote their own interests or biases through the media in a manner harmful to democratic discourse.

Even in New York, the largest market in the country, a cross-media merger involving a large newspaper or television station resulting in ownership by one entity of one or more television stations and two newspapers would increase concentration so that the market would become a concentrated, tight oligopoly. For example, data provided by Fox Television Stations as part of its Application For Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License (BTCCT-20050819AAF, *et al.*) (the "Application"), shows that News Corporation's ownership of Stations WWOR-TV, WNYW(TV) and the New York Post

[27] *2002 Biennial Review Order*, 18 FCC Rcd. at 13780-83. The Commission noted that there was no reason to believe that all media are of equal importance to the public. Public responses to a Nielsen Media Research prepared survey established that over 62% of respondents relied on newspapers and television stations for local news and current affairs. When the question was asked which source was the "primary source" for local and national news, respondents named television or newspapers over 83% of the time.

[28] *Associated Press v. United States*, 326 U.S. 1, 20 (1945). The Supreme Court went on to state that "[f]reedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedon by private interests." *Id.*

resulted in estimated 2003 revenues of $455,726,000, comprising an 11.3% share of revenues in the New York media market. According to the Application, News Corporation owns a subsidiary that publishes the New York Post. The Application sought Commission authority to transfer control of Fox Television Stations, Inc., licensee of Station WNYW(TV), New York, New York and WWOR-TV, Secaucus, New Jersey, both of which are licensed to the New York, New York Designated Market Area, from K. Rupert Murdoch to Fox Entertainment Group, Inc.[29] The New York Post is the only daily newspaper owned by News Corporation in the New York market. However, News Corporation has recently acquired two newspaper groups with 28 weekly papers primarily serving the New York City Boroughs of Queens and Brooklyn.[30]

Were the News Corporation to acquire yet another daily newspaper, such as Newsday, the estimated revenues would sharply increase to $875,842,000, comprising almost a 22% share

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[29] *See K. Rupert Murdoch and Fox Entertainment Group,* FCC 06-122, released October 6, 2006. News Corporation is a diversified international media and entertainment company with operations in eight industry segments: television, cable network programming, direct broadcast satellite television, magazines and inserts, newspapers (daily and weekly), filmed entertainment, book publishing and other. A review of its media ownership conclusively demonstrates that its reach, both nationally and in the NewYork market, extends well beyond its ownership of WNYW, WWOR-TV and The New York Post. Fox Television Stations currently is licensee of 35 full power stations, including stations located in 9 of the 10 top largest markets, which cover nearly 45 percent of U.S. television homes. Of the 35 full power stations, 25 stations are affiliates of FOX Broadcasting Company ("FOX") and the other stations are affiliates of News Corporation-owned MyNetworkTV, Inc., the first all Hi-Definition broadcast television network. FOX has 201 affiliates, which serve, along with Fox Net, a News Corporation-owned cable service which reaches areas not served by a free over-the-air FOX Affiliate, approximately 98 percent of U.S. households. Each week FOX regularly delivers to its affiliates fifteen hours of prime-time programming and one hour of late-night programming on Saturday along with a four-hour block of children's programming on Saturday morning. FOX is one of the nation's four largest programmers, and during the 2005-2006 broadcast season, FOX ranked first in prime-time programming based on viewership of adults aged 18-49. News Corporation holds interests in cable network programming businesses that produce and license news, sports, general entertainment and movie programming for distribution to cable network systems and DBS providers in the United States and internationally. Fox Cable Networks includes thirty domestic programming services in which News Corporation holds interests. Together these networks reach more than 335 million households and include such cable channels as Fox News Channel (a 24-hour all news national cable channel currently available to approximately 89 million households), FX (a general entertainment network reaching approximately 89 million households), Fox SportsNet (the largest regional sports network, reaching over 85 million households through its 21 regional sports channels), Speed (devoted to auto racing and reaching approximately 67 million households in the U.S.), Fox College Sports, FUEL TV, Fox Sports International, Fox Movie Channel, Fox Reality and the National Geographic Channel. News Corporation also owns a significant equity interest in DIRECTV, a direct broadcast satellite business, which is the leading provider of digital multichannel television service in the United States. News Corporation additionally owns and operates Fox Interactive Media, Inc. ("FIM"), which operates numerous businesses across the Internet, including MySpace.com, FoxSports.com, Scout.com, Fox.com, AmericanIdol.com, IGN.com, and other web properties. As of June 30, 2006, FIM was the sixth largest network of users on the Internet in the United States, and for the three months ending June 30, 2006, the FIM Network of websites averaged 77 million unique visitors a month. *News Corporation Form 10-K,* filed with Securities and Exchange Commission on August 23, 2006; www.newscorp.com.

[30] *New York Times,* September 28, 2006 (According to Les Goodstein, the senior vice president of the News Corporation, "what we really wanted to do here was find publications from a business standpoint that would complement the New York Post").

of revenues in the New York media market. Such a result would be nothing less than a diversity and public interest disaster, yet would have been acceptable to the Commission under its former Cross-Media Limits, where the Commission would have judged the impact of the New York Post or Newsday towards diversity no greater than ownership of the Middletown Times Herald Record and the impact of Station WWOR-TV in the New York market the same as WTBY-TV, Poughkeepsie, New York. The Commission cannot ignore media concentration of this magnitude.

While there is no absolute guarantee that such a media merger or something comparable to it would happen in the absence of enforceable Commission newspaper/broadcast cross-ownership restrictions, experience over the past ten years since the Commission and Congress loosened media ownership restrictions plus recent events in the newspaper industry strongly suggests that the probability that such a cross-media acquisition could take place is substantial. In fact, Tribune Company, publisher of Newsday, has recently admitted that it is considering selling its newspapers, including Newsday.[31] And, according to recent newspaper reports, even the venerable New York Times might soon be available.[32] If the News Corporation were to acquire The New York Times, its estimated revenues would increase to over One Billion Dollars ($1,084,904), comprising a 26.9% share of revenues in the New York media market.

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[31] *See Wall Street Journal,* October 23, 2006, page A3 (auction of Tribune Co. attracting interest from groups of private-equity firms, including ones with existing broadcast ownership); www.washingtonpost.com, posted October 6, 2006 (Tribune Co., publisher of Newsday, names a committee to explore restructuring options, including selling the Los Angeles Times and other newspapers); www.usnews.com, posted September 22, 2006 (Tribune Co. hints at unwinding its media empire); www.cnnmoney.com, posted September 18, 2006 (Tribune Co. under pressure to sell L.A. Times); www.businessweek.com, posted June 20, 2006 (two top Tribune Co. executives respond to call for breakup by shareholders by stating that future sales could include broadcasting and publishing businesses). A possible breakup of the Tribune Co., the nation's third-largest newspaper publisher, follows the sale of Knight Ridder, the nation's second-largest newspaper publisher to The McClatchy Company earlier this year. Following that purchase, McClatchy sold off several former Knight Ridder papers.

[32] *See The New York Post,* October 13, 2006 (Business Section) (rumors that The New York Times recently has been approached by leveraged-buyout firms).

It has long been a basic tenet of communications policy that "there be competition in the radio broadcasting industry."[33] The Communications Act directs the Commission to serve the public interest by "assur[ing] fair opportunity for open competition in the use of broadcasting facilities."[34] The Commission's longstanding commitment to promote competition by assuring pro-competitive market structure would best be served by enacting limitations on cross-media mergers involving entities owning more than one daily newspaper and one or more television stations. As previously noted, consumers receive more choice, lower prices and more innovative services in competitive markets than they do in markets where one or more firms exercise market power.[35] A market structure limiting the ability of one entity to own television stations and newspapers is more likely to result in vigorous competition. As the Commission has noted, the aggregation of an inordinate market share by a small number of firms will tend to harm public welfare since highly concentrated markets tilt the proper balance of power too far in favor of some firms and against those who would challenge them.[36]

In markets where there are such newspaper/broadcast combinations involving two newspapers and television stations, such firms can be expected to employ a range of anti-competitive tactics such as cross-subsidization, predatory pricing, cross-promotion involving the marketing of multimedia advertising packages and price discrimination.[37] Inefficient competition in the local advertising market harms the public interest since advertisers who have to pay more to advertise will pass on those costs to their customers.

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[33] *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 474-76 (1940).

[34] *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956). *See also FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 137 (1940) ("Congress moved under the spur of a widespread fear that, in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field.").

[35] *See* note 22, *infra.*

[36] *2002 Biennial Review Order*, 18 FCC Rcd. at 13639.

[37] For example, a cross-media conglomerate has the ability to "bundle" packages of advertising vehicles to potential advertisers in a manner which its competitors simply cannot. This creates a resulting market advantage which has the potential to unfairly impede competition in the media market.

III. Conclusion

The Commission should continue to be guided in this rulemaking by the original objectives of its newspaper/broadcast cross-ownership rule: to preserve diversity and competition consistent with the public interest. For the reasons set forth above in these comments, Daily News urges the Commission to adopt a blanket ban on cross-ownership involving more than one newspaper and one or more television stations in a single market.

Respectfully submitted,
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Table 2: HHI Calculation New York Media Market

Name	Media Type	Number of Properties	Est. '03 Revenue ($000)	Share of Revenue
ABC/Disney	Radio	4	71,400	1.8%
	TV	1	286,300	7.1%
	Total:	*5*	*357,700*	*8.9%*
Access.1 Communications	Radio	1	2,700	0.1%
Advance Publications Inc	Newspaper	1	209,144	5.2%
Alexander Broadcasting Co	Radio	1	200	0.0%
Bloomberg Communications Inc	Radio	1	5,100	0.1%
Buckley Broadcasting Corporation	Radio	1	19,600	0.5%
Clear Channel Communications	Radio	5	212,600	5.3%
Emmis Communications	Radio	3	93,600	2.3%
Inner City Broadcasting Corporation	Radio	2	29,200	0.7%
Mortimer Zuckerman	Newspaper	1	301,321	7.5%
Multicultural Radio Broadcasting Inc	Radio	5	17,900	0.4%
NBC/GE	TV	3	388,600	9.6%
New York Times Co	Newspaper	1	629,178	15.6%
	Radio	1	15,400	0.4%
	Total:	*2*	*644,578*	*16.0%*
News Corp	TV (WWOR-TV)	1	223,200	5.5%
	TV (WNYW)	1	130,000	3.2%
	Newspaper	1	102,526	2.5%
	Total:		*455,726*	*11.3%*
Polnet Communications Ltd	Radio	1	600	0.0%
Salem Communications Corporation	Radio	2	12,000	0.3%
Scripps Howard Inc	TV	1	2,100	0.1%
Spanish Broadcasting System	Radio	2	51,200	1.3%
Tribune Company	Newspaper	1	420,116	10.4%
	TV	1	250,200	6.2%
	Total:	*2*	*670,316*	*16.6%*
Universal Broadcasting	Radio	1	800	0.0%
Univision Communications Inc	Radio	2	11,700	0.3%
	TV	2	83,200	2.1%
	Total:	*4*	*94,900*	*2.3%*
Viacom International Inc	Radio	6	260,800	6.5%
	TV	1	205,000	5.1%
	Total:	*7*	*465,800*	*11.5%*
Vulcan Ventures Inc	Radio	1	3,400	0.1%
TOTAL:		**55**	**4,039,085**	**100%**
Pre-Merger HHI				**1,021**
Post-Merger HHI				**1,085**
Change in HHI				**64**

Source: BIAfn's MEDIA Access Pro™